



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/159550

PRELIMINARY RECITALS

Pursuant to a petition filed July 25, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on September 23, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHCAA) correctly modified the Petitioner's request for prior authorization of personal care worker (PCW) service hours.

NOTE: The record was held open to give the Petitioner's representative an opportunity to submit letters from Petitioner's physician. The letters have been marked as Exhibit 4 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is 88 years old and suffers from dementia, diabetes and high blood pressure. (Exhibit 2, pgs. 5-9 and pg. 14; Exhibit 4)
3. Petitioner lives with family members and her grandson serves as her PCW. (Testimony of RR, Petitioner's representative/daughter)
4. On May 22, 2014, Community Home Health Care, Inc. (Community Home Health) submitted on behalf of the Petitioner a request for prior authorization of 6.75 hours per day of PCW hours, seven days per week for 53 weeks and 24 hours of PCW services to be used as needed, for a total cost of \$63,206.25. (Exhibit 2, pg. 4)
5. This request for services was based upon a Personal Care Screening Tool completed on May 15, 2014. (Exhibit 2, pgs. 16-23)
6. On June 19, 2014, the Department of Health Services (DHS) sent the Petitioner a notice indicating that the request for services was modified. (Exhibit 2, pgs. 28-31)
7. On June 19, 2014, the agency sent Community Home Health notice of the same. (Exhibit 2, pgs. 32-33)
8. The Petitioner's daughter/authorized representative filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 25, 2014. (Exhibit 1)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;

4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

Community Home Health, on behalf of Petitioner, requested 6.75 hours per day (47.25 hours per week) of Personal Care Worker (PCW) hours, with 24 additional hours per year to be used as needed.

DHS approved 3 hours per day (21 hours per week) with 24 hours per year to be used as needed.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, Community Home Health, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table, which is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165.*

This chart can be found at the aforementioned website. A copy of the table was also attached to the OIG letter, Exhibit 3, attachment 10)

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs) are examined.

The letter from the Office of the Inspector General, indicated that DHS allotted the following times for the following tasks:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day, x 7 days	140 minutes per week
3. Grooming: 30 minutes per day x 7 days	210 minutes per week
4. Eating:	Zero minutes
5. Mobility:	Zero minutes
6. Toileting: 60 minutes per day x 7 days	420 minutes per week
7. Transfers:	Zero minutes
8. MOTs (i.e. Glucometer readings)	Zero minutes
<hr/>	
Total:	980 minutes

The Petitioner's daughter/representative indicated that she did not have any dispute with regard to the time allowed for bathing, dressing grooming and toileting, but she disagreed with the agency's determination that her mother did not need assistance with eating, mobility, transfers and MOTs.

Eating

With regard to eating, the PCST indicated that the Petitioner needs assistance at level D, three times per day. The PCST states that the Petitioner needs supervision to make sure she eats properly and does not lose weight.

According to the letter from OIG, time for eating was not allowed, because it interpreted the information in the PCST to mean that the Petitioner can pick up a utensil and feed herself, but needs supervision.

The Personal Care Addendum (Exhibit 2, pgs. 24-27) indicates that the Petitioner, "need supervision to ensure completion of meal and to make sure she don't throw food away..." Petitioner's daughter/representative testified that the Petitioner is able to feed herself, but she needs assistance with opening and pouring from containers and that she needs reminders to eat.

According to the PCST instructions (Exhibit 3, attachment 11), time for meal preparation, i.e. opening containers or pouring, is included in the time allowed for incidental tasks, and is not considered assistance with eating. The PCST instructions also state that an individual, like the Petitioner who is able to feed herself, but needs to be reminded to eat or requires cueing to stay on task, needs assistance a level B NOT level D.

The Personal Care Time Allocation Table indicates that no PCW time is allowed for individuals who need assistance at level B. As such, it is found that DHS correctly denied time for assistance with eating.

Mobility

Mobility means a person's ability to move about her home safely. The PCST indicated that the Petitioner needs assistance with mobility at level C, meaning she moves herself with constant supervision and physical intervention to make sure she completes the task. The PCST further indicated that the Petitioner has a history of falls.

The Personal Care Addendum, indicates that the Petitioner is very frail and has a history of falls. The Personal Care Addendum also indicates that the Petitioner suffers from leg pain, which makes it difficult to walk.

According to the letter from OIG, DHS denied time for mobility because it found the information in the PCST to be contradicted by progress notes made by the Petitioner's doctor (Exhibit 2, pgs. 5-8) and because it is contradicted by the Home Health Certification and Plan of Care. (Exhibit 3, attachments 3)

It is not clear how DHS could look at the physician's notes and conclude that Petitioner needs or doesn't need assistance with mobility, since they don't provide any information about the Petitioner's ability or inability to walk around safely, with the exception of one note from December 10, 2013, indicating that the Petitioner was "ambulatory to clinic" after losing consciousness for 15 minutes.

Looking at the Home Health Certification and Plan of Care, under section 18.B. Activities Permitted, the box "No Restrictions" is marked, even though under section 21 Orders for Discipline and Treatments, it states that the Petitioner needs assistance with mobility to maintain safety. Thus, that document does make one question whether the level of assistance marked on the PCST was correct.

Petitioner's daughter/representative indicated that the Petitioner has had a fall outside the home, but also stated that the Petitioner has a walker and can move about independently with the walker.

According to the PCST instruction, an individual, like the Petitioner, who is able to move about independently with a walker needs assistance at level A. The Personal Care Activity Time Allocation Table does not allow any PCW time for a person who needs assistance at level A.

Transfers

The PCST indicated that the Petitioner needs assistance with transfers at level D, because she needs physical assistance from another person and is a high safety risk.

DHS denied time for Transfers for the same reasons it denied assistance with mobility.

Petitioner's daughter/representative indicated that the Petitioner is unable to get up from a sitting position without physical assistance, but it not clear why this is the case. The physician note from January 10, 2014, indicates that the Petitioner suffers from rotator cuff tendonitis, which might impede the Petitioner's ability to use her walker to get up from a sitting position, but subsequent physician notes do not comment further on this condition, so it is not clear whether the condition continues to be a problem for the Petitioner.

Because there isn't enough information in the record to prove the Petitioner needs assistance with transfers, it is found that DHS correctly denied time for this task.

Medically Oriented Tasks

DHS denied time for MOTS, such as checking the Petitioner's blood sugars, because these tasks were not listed under section 21. Orders for Discipline and Treatments, in the Home Health Certification and Plan of Care.

According to the Administrative Code, *Wis. Admin. Code DHS §107.112(1)(a)*, PCW services "shall be provided upon written orders of a physician ...according to a written plan of care." Because MOTs were not included in the Home Health Certification and Plan of Care, DHS correctly denied time for these tasks.

The Final Calculation

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming Petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. The DHCAA allowed for this time which works out as follows:

The actual time needed to complete Petitioner's ADLs was 980 minutes. (See above) One fourth of 980 minutes is 245 minutes. So, Petitioner may receive an additional 245 minutes per week for incidental tasks.

Totaling all of the time allowable for Petitioner we have:

980 minutes per week for ALDs
245 minutes per week for incidental activities

1225 minutes per week ÷ 60 = 20.42 hours per week.

DHS approved 21 hours per week of PCW services. As such, DHS correctly modified Petitioner's request for services.

Petitioner's representative should note that Community Home Health can, at any time, submit a new prior authorization request seeking additional PCW hours, if it obtains additional, CURRENT, medical documentation showing that the Petitioner is, in fact, a fall risk and needs physical assistance to get around her home, or to get up from a sitting position.

Community Home Health can also submit a new prior authorization request if Petitioner's physician orders the PCW to perform MOTs in the Home Health Certification and Plane of Care.

Community Home Health will not receive a copy of this decision. Petitioner's representative is encouraged to share a copy with them.

CONCLUSIONS OF LAW

DHS correctly modified the Petitioner's request for PCW service hours.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

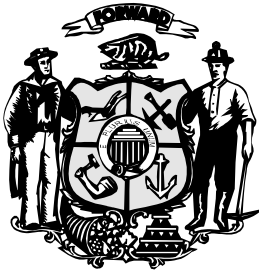
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of October, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 6, 2014.

Division of Health Care Access and Accountability